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ALEXANDER L. STEVAS,
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No. 82-5879

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

JEFFERY JOSEPH DAUGHERTY,

Petitioner,

-against-

STATE OF FLORIDA,

Respondent.

PETITIONER'S REPLY

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Petitioner Jeffery Joseph Daugherty submits this reply to Respondent's Brief in Opposition to the Petition for a Writ of Certiorari.

1. Respondent acknowledges that Mr. Daugherty designated "the transcription of all Court proceedings occurring in the bifurcated or sentencing phase" as the record on appeal, but claims that this designation was narrowed by the prefatory language "only so much of the proceedings as fairly supports the issues raised." Respondent's Brief in Opposition at 4. In fact, the prefatory language which Respondent construes to be limiting is nothing more than a boilerplate introduction taken verbatim from Florida Rule of

Appellate Procedure 9.140(d).* The format of the designation itself demonstrates the boilerplate nature of the preface. See R. 295 (attached as Appendix A). Finally, any doubt as to the intended breadth of the designation is dispelled by Petitioner's express instructions to the clerk of the trial court, requesting preparation of: "[t]he complete original record on appeal including, but not limited to, all indictments, motions, orders, minutes of the Court, Court Reporter's transcription of Court proceedings and exhibits entered into evidence" as the complete certified record on appeal. R. 293. Respondent also ignores the independent statutory and constitutional duty of the Florida Supreme Court to review the complete sentencing record in capital cases. See Gardner v. Florida, 430 U.S. 349, 361 (1977); Entsminger v. Iowa, 386 U.S. 748 (1967); Goode v. State, 365 So.2d 381, 384 (Fla. 1979); Delap v. Florida, 350 So.2d 462, 463 n.1 (Fla. 1977); Fla. Stat. Ann. § 921.141(4). The "issues raised" necessarily included whether, on the entire record, the sentence of death was appropriately imposed. See Petition at 8-11.

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* That rule, applicable in cases of appeal by an indigent defendant, provides:

> If a defendant's designation of a transcript of proceedings requires expenditure of public funds, trial counsel for the defendant (in conjunction with appellate counsel whenever possible) shall serve, within 10 days of filing the notice, a statement of the judicial acts to be reviewed and a designation to the court reporter requiring preparation of only so much of the proceedings as fairly supports the issues raised. Either party may file motions in the lower tribunal to reduce or expand the transcript. (Emphasis added.)

2. Respondent concedes that the record before the Florida Supreme Court did not include: (1) the sentencing arguments by counsel; (2) the jury instructions; (3) a transcript of the forty-minute taped statement by Daugherty which was played at the sentencing hearing before the jury; and (4) the jury voir dire. Respondent's Brief in Opposition at 6-7. Although Daugherty's presentence investigation report was not part of the certified record transmitted by the clerk of the trial court to the Florida Supreme Court, Respondent is correct in stating that the Florida Supreme Court requested a copy of a non-certified report directly from the Florida Department of Corrections. See Respondent's Brief in Opposition, App. 5. Petitioner's counsel has ascertained that the Florida Supreme Court did obtain a copy of a non-certified report, and Petitioner therefore withdraws that portion of his argument which rested on a contrary understanding of the record below. See Petition at 11-12.*

3. Respondent contends that the Florida Supreme Court had no duty to evaluate and weigh the evidence of aggregating and mitigating circumstances upon which Daugherty's death sentence is predicated. Respondent's Brief in Opposition at 8-9. Indeed, Respondent demonstrates that the Florida Supreme Court has systematically abandoned its previously recognized obligation to make an independent

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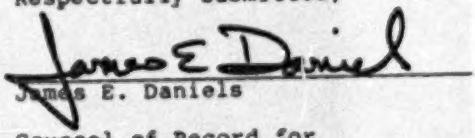
* Petitioner does note that the practice by which the Florida Supreme Court obtains non-certified reports from the Department of Corrections rather than as part of the certified record has been challenged. See Ford v. Strickland, No. 81-6200, ___ F.2d ___ (11th Cir. Jan. 7, 1983) (en banc).

determination of whether a death sentence is warranted. Under such circumstances, the Florida capital-sentencing procedures do not ensure the meaningful appellate review which this Court relied upon in upholding Florida's capital punishment system. See Proffitt v. Florida, 428 U.S. 242 (1976); Quince v. Florida, No. 82-5096, cert. denied, ___ U.S. __, 51 U.S.L.W. 3251 (October 4, 1982) (Marshall, J., dissenting from denial of certiorari). As applied to Petitioner, the Florida capital-sentencing procedures are unconstitutional. Petition at 14-15.

Dated: January 24, 1983

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of this Court and that I served this Reply upon Respondent pursuant to Supreme Court Rule 28 by placing a copy in the United States mail with first class postage prepaid, addressed to:

Jim Smith, Esq.
Attorney General
Department of Legal Affairs
Suite 1502 - The Capital
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Sid J. White, Clerk
Florida Supreme Court
Supreme Court Building
Tallahassee, Florida 32304

Done this 24th day of January, 1983.

James E Daniel

James E. Daniels, Esq.

IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 80-1478-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

JEFFERY JOSEPH DAUGHERTY,

Defendant.

DESIGNATION OF THE RECORD TO THE COURT REPORTER

TO: The Official Court Reporter
Brevard County Courthouse
Titusville, Florida 32780

COMES NOW the Defendant/Appellant, and pursuant to Florida Rules of Appellate Procedure 9.140(d), respectfully designates to the Court Reporter the following as only so much of the proceedings as fairly supports the issues raised:

The transcription of all Court proceedings occurring in the bifurcated penalty or sentencing phase of the above styled case.

Defendant/Appellant further requests of the Court Reporter that such transcripts be filed in triplicate with the Clerk of the Circuit Court within 30 days of service of this designation.

I HEREBY CERTIFY that a copy of the foregoing has been hand delivered to the State Attorney's Office and the Official Court Reporter, Brevard County Courthouse, Titusville, Florida and mailed to the Assistant Attorney General's Office, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014, on this 8th day of June, 1981.

ARTHUR [illegible]
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Attorney for Defendant/Appellant

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